

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11292 of 1998

- =====
1. Shiva Narain Rai, son of Awardhan Rai, Resident of Village- Kamlabari, Police Station-Keoti, District- Darbhanga.
 2. Ajay Kumar, son of Mahendra Prasad, Resident of Village- Jarang Gortoli, Police Station- Gaighat, District- Muzaffarpur.
 3. Jainandu Kumar Nidhi, son of Kailash Chandra Nidhi, Resident of Village- Samaila, Police Station- Keoti, District- Darbhanga.
 4. Satya Narain Rai, son of Awardhan Rai, Resident of Village- Kamlabari, Police Station-Keoti, District- Darbhanga.
 5. Smita Kumari, daughter of Late Bhola Prasad Gupta, Resident of Mohalla-Balbhadrapur, Police Station- Laheriasarai, District- Darbhanga.
 6. Binod Kumar Singh, son of Jagdish Singh, Resident of Village- Aliganj, Police Station- Surajpura, District- Rohtas.
 7. Raghawendra Kumar, son of Divakant Pathak, resident of Village- Bheja, Police Station- Madhepur, District- Madhubani.
 8. Ashok Kumar Singh, son of Bijoy Kumar Singh, resident of Village- Piparahiya, Police Station..... District – Bhojpur.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Secretary to Government Welfare Department, Govt. of Bihar, Patna.
3. The Under Secretary to Government Welfare Department, Govt. of Bihar, Patna.
4. The Director, Social Welfare, Department of Welfare, Govt. of Bihar, Patna.
5. The Director, Welfare, Welfare Department, Govt. of Bihar, Patna.
6. The Deputy Director, Welfare, Darbhanga Division, Darbhanga.
7. The Deputy Director, Social Welfare, Welfare Department, Govt. of Bihar, Patna.
8. Commissioner, Darbhanga Division, Darbhanga.
9. District Magistrate, Darbhanga.
10. District Magistrate, Samastipur.
11. The District Programme Officer, ICDS, Darbhanga, District- Darbhanga.
12. The Child Development Project Officer, Hayaghat, District- Darbhanga.
13. The Child Development Project Officer, Darbhanga Rural, District- Darbhanga.
14. The Child Development Project Officer, Kusheshwar Asthan, District- Darbhanga.
15. The Child Development Project Officer, Biroul, District- Darbhanga.
16. The Child Development Project Officer, Kalyanpur, District- Samastipur.
17. The Child Development Project Officer, Rosera, District- Samastipur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Dr. Mayanand Jha with

Bipin Bihari Singh, Advocates.
Mr. Manoj Kumar Sinha

For the Respondent/s : Mr. Kinkar Kumar, S.C. 27.
Mrs. Ruchika Kumari, A.C. to S.C.27.

=====

CORAM: HONOURABLE MR. JUSTICE NAVIN SINHA
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVIN SINHA)

Date: 10-01-2014

Heard learned counsel for the petitioners and the State.

The petitioners are aggrieved by order dated 12.10.1998 terminating their services on the ground that the appointment itself was illegal.

Learned counsel for the petitioners submits that they were appointed as Clerks in 1995 under the Integrated Child Development Scheme by the Deputy Director, Welfare, who was competent to make the appointments. They were all registered with the local Employment Exchange which had also forwarded their names for consideration in pursuance of a requisition made. They had also applied in response to a notice board advertisement published by the Deputy Director. The selection was made by the Committee empowered to do so. Pursuant to a show cause, they were terminated on 7.1.1997. In C.W.J.C. No.1703/97, the termination was set aside as not based on proper application of mind issued in a cyclostyled form with 'fill in the blanks'. If the appointment was in violation of Circulars of the Government, the Court had observed it was a fit case where the erring authority Shri B.P. Choudhary also should have been

proceeded with. He was allowed to superannuate and has also passed away with no action taken against him.


Learned counsel for the State submitted that the appointments were per se illegal. The counter affidavit specifically denies that any requisition was sent to the Employment Exchange alleging that the requisition dated 28.2.1994 annexed to the writ petition was forged and fabricated. No requisition was ever sent to the Employment Exchange either at Darbhanga or Samastipur. No merit list was prepared after selections, an imperative for fixing seniority of candidates. Varying stands have been taken. At one point of time it stated that requisitions were obtained from the Employment Exchange. In the reply to the show cause notice the petitioners have talked of an "advertisement published", which obviously means a paper publication. The third defence taken is of a notice board advertisement. The conflicting stands taken by the petitioners is per se evidence of an illegal appointment.

Learned counsel for the petitioners placed before us an order dated 17.2.2009 in C.W.J.C. No.9788/98 submitting that similar appointments have been referred to a Full Bench in view of conflicting interpretations with regard to the policy decision of the State Government in the Appointment Department with regard to empowerment and authority for appointment. We are of the opinion that it is not relevant for the present controversy as the prime issue to be decided first is if the appointments

originated by a proper advertisement in accordance with law. If not the question for violation of any procedural circulars becomes irrelevant.

The show cause preceding the termination dated 7.1.1997 inter alia stated absence of any merit list. The petitioners in their reply did not deny it. In any event, the order for reinstatement passed in C.W.J.C. No.1703/97 was not on merits but on technicalities with liberty to proceed afresh against the petitioners and the appointing authority also.

Fresh show cause notice was issued thereafter on 18.5.1998. It specifically asserted that no procedures for appointment were followed, no advertisement was published or selection committee constituted, much less merit list prepared and reservation roster was not followed. The petitioners in their reply to the show cause notice talked of an advertisement by publication but did not mention the date of the advertisement much less the manner of publication. The fact that no merit list had been prepared was again not denied. Fresh orders for termination followed on 12.10.1998 which is assailed presently. They were heard in person by the Director, Social Welfare. The stand taken now was of a notice board advertisement in August, 1995 in the office of the Deputy Director, Welfare. The order for termination states that during hearing the petitioners unequivocally accepted that there had been no Newspaper Advertisement. The finding of the authority was that no merit list




had been prepared. Similar appointment of one Ram Swarath Yadav had been terminated, declined interference in C.W.J.C. No.4126/97, affirmed in L.P.A. No.162/98. One Vijay Kumar Jha had likewise filed C.W.J.C. No.10539/96 which was also dismissed holding that no procedures for appointment had been followed.

In the present writ petition, a new stand has been taken on this third occasion, not raised in reply to the second show cause notice at two stages earlier that the appointments were made on a requisition from the Employment Exchange.

The defence of a requisition called for from the Employment Exchange stands demolished by the counter affidavit filed by the respondents that the document relied upon by the appellants was forged. It appears to be in consonance with the failure of the petitioners to take that defence on earlier occasions. The reply to the same at paragraph-5 of the rejoinder is casually answered stating that no enquiry had been held to determine this fact.

Any appointment on a Government post has to be strictly in accordance with an advertisement followed by a merit competitive selection and preparation of a merit list. The merit list is a confirmation of the final selections made and also the seniority of the candidates. Appointments made without a merit list are also not sustainable, suggestive of appointments having been made contrary to the law.



A notice board advertisement is no advertisement at all as held in 1992 (2) P.L.J.R. 568 Teja Prasad & Ors. Vs. The State of Bihar & Ors.), (2008) 1 SCC 798 (NAGENDRA CHANDRA AND OTHERS Versus STATE OF JHARKHAND AND OTHERS) and (2011) 3 SCC 436 (STATE OF ORISSA AND ANOTHER Versus MAMATA MOHANTY), not meeting the requirements of Article-14 lacking adequate notice and opportunity to all eligible.

In the facts and circumstances of the present case, we agree with the submission on behalf of the State that the differing stands taken by the petitioners themselves, at one point of time contending that there had been an advertisement published, at another a notice board advertisement and finally requisition of names from the Employment Exchange with regard to the very same appointments leads to the only conclusion of appointments having been made contrary to the law.

The order for termination states that Mr. B.P. Choudhary was proceeded with departmentally but stops at that. If there was an order of the Court to hold departmental proceedings against him, it has to be complied with.

In 2013 (1) P.L.J.R. 964 (Ram Sevak Yadav & Anr. Vs. The State of Bihar & Ors.), we had noticed similar directions given in 1995 (2) P.L.J.R. 573 (D.B.) (Vimal Kishore Rai vs. State of Bihar) and gave directions likewise.

The observations in Vimal Kishore Rai (supra) are serious and satisfy us to direct the State Government to file a

report before us if action was taken against Shri B.P. Choudhary or not and what was the final order of punishment passed against him. If no final decision was taken, the State Government shall identify the persons who facilitated the same and file an affidavit before us.

This application shall be listed before us for that purpose under the heading “orders” on the 10th of February, 2014. The affidavit must be sworn by a senior officer of the rank of Principal Secretary and above only.

Insofar as the present writ application is concerned, we find no merit in it. The application is dismissed.

(Navin Sinha, J)

(Vikash Jain, J)

Patna High Court,
Patna, Dated: 10th of
January, 2014/NAFR
K.C.jha/-

—
□ U
□ T